

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHRISTOPHER J. SANCHEZ,

Plaintiff,

v.

HAROLD CLARKE *et al.*,

Defendants.

Case No. C05-5323RBL

REPORT AND  
RECOMMENDATION  
REGARDING INJUNCTIVE  
RELIEF

**NOTED FOR:  
September 23<sup>rd</sup>, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the court are two motions for preliminary injunctive relief. (Dkt. # 7 and 8). Defendants have addressed the motion regarding classification, (Dkt. # 8), but have not addressed the motion regarding mail, (Dkt. # 7). (Dkt. # 18). Defendants counsel asserts they have not been properly served with the motion regarding mail. (Dkt. # 19). There is no proof of service.

Any motion plaintiff wishes the court to consider must be properly served on opposing counsel. The court will not consider the motion regarding mail at this time. If plaintiff wishes the court to consider this motion he should re note the motion and properly serve opposing counsel .

Report and Recommendation- 1

1 Plaintiff has spent the last year on intensive management status as a result of a fight with another  
 2 inmate. That year is now over and in the normal course of business plaintiffs classification is being  
 3 reviewed.

4 This action concerns plaintiff being placed in an intensive management unit and the possibility of  
 5 his being released from that unit back into general population. Plaintiff alleges he was injured in the  
 6 fight with another inmate a year ago and he can no longer defend himself. He alleges there are inmates  
 7 in the prison who wish to harm him and plaintiff alleges he will be in danger if he is released back into  
 8 general population in the prison. He asks for transfer to another prison, Mc Neil Island. (Dkt. # 8).

9 Defendants have responded indicating that plaintiff has made prison officials aware of his  
 10 concerns and his counselor is recommending plaintiff be transferred to another prison and kept on  
 11 intensive management status for the time being. That classification would preclude release into general  
 12 population. (Dkt. # 18).

### 13 DISCUSSION

14 The basic function of injunctive relief is to preserve the status quo ante litem pending a  
 15 determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National  
 16 Football League, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980). A party seeking injunctive relief must fulfill  
 17 one of two standards, the "traditional" or the "alternative." Cassim v. Bowen, 824 F.2d 791, 795 (9<sup>th</sup>  
 18 Cir. 1987).

19 Under the traditional standard, a court may issue preliminary relief if it finds that (1) the  
 20 moving party will suffer irreparable injury if the relief is denied; (2) the moving party will  
 21 probably prevail on the merits; (3) the balance of potential harm favors the moving party; and  
 22 (4) the public interest favors granting relief. . . . Under the alternative standard, the moving  
 party may meet its burden by demonstrating either (1) a combination of probable success and  
 the possibility of irreparable injury or (2) that serious questions are raised and the balance of  
 hardships tips sharply in its favor.

23 Id. (citations omitted).

24 Plaintiff fulfills neither test. Plaintiff has shown at best that prison officials are reviewing his  
 25 classification in the ordinary course of business. He has not shown there is any immediate threat and  
 26 prison officials indicate they are aware of plaintiff's concerns and do not plan to release him into  
 27 general population at this time. Accordingly the motion for injunctive relief should be denied at this

1 time

2 CONCLUSION

3 For the reasons outlined above the undersigned recommends **DENYING** this motion. A  
4 proposed order accompanies this Report and Recommendation.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
6 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
7 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
8 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
9 72(b), the clerk is directed to set the matter for consideration on **September 23<sup>rd</sup>, 2005**, as noted in  
10 the caption.

11 DATED this 30<sup>th</sup> day of August, 2005.

12  
13 /s/ J. Kelley Arnold  
14 J. Kelley Arnold  
15 United States Magistrate Judge  
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